

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 16-1167V

Filed: December 22, 2016

Unpublished

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KIMBERLY ALBERS-FEHR,

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Petitioner,

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v.

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Ruling on Entitlement; Concession;

Influenza Vaccination;

Shoulder Injury Related to Vaccine

SECRETARY OF HEALTH

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Administration ("SIRVA");

AND HUMAN SERVICES,

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Special Processing Unit ("SPU")

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Respondent.

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*Paul Brazil, Muller Brazil, LLP, Dresher, PA, for petitioner.*

*Douglas Ross, U.S. Department of Justice, Washington, DC, for respondent.*

### RULING ON ENTITLEMENT<sup>1</sup>

**Dorsey**, Chief Special Master:

On September 20, 2016, Kimberly Albers-Fehr ("petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> (the "Vaccine Act" or "Program"). Petitioner alleges that she suffered right shoulder injuries resulting from the influenza vaccination she received on October 11, 2015. Petition at 1, ¶¶ 2, 16. Petitioner further alleges that she received the vaccination in the United States, has suffered the residual effects of her injury for more than six months, and that neither she nor any other party has filed an action or received compensation for her injury alleged as vaccine caused. *Id.* at ¶¶ 2, 16-18. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 22, 2016, respondent filed her Rule 4(c) report in which she concedes that petitioner is entitled to compensation in this case. Respondent's Rule

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<sup>1</sup> Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2012)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

4(c) Report at 1. Specifically, respondent “concluded that petitioner suffered a non-Table injury of SIRVA and that the preponderance of the medical evidence indicates that the injury was causally related to the flu vaccination she received on October 11, 2015.” *Id.* at 7. Respondent further indicates that “based on the record as it now stands, compensation is appropriate, as petitioner has satisfied all legal prerequisites for compensation under the Act.” *Id.*

**In view of respondent’s concession and the evidence before me, I find that petitioner is entitled to compensation.**

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**  
Nora Beth Dorsey  
Chief Special Master